No. 79-1734

IN THE

Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1980

ROBERT PARRATT and
FRANCIS LUGENBILL,

Petitioners,

vs.

BERT TAYLOR, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS, EIGHTH CIRCUIT

BRIEF OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. AND THE STATE OF INDIANA, AS AMICI CURIAE IN SUPPORT OF THE PETITIONERS

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This brief is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by the Hon. Paul L. Douglas, Attorney General of Nebraska, counsel for Petitioners, and by Kevin Colleran, Esq., counsel for the Respondent. Letters of consent of both parties have been filed with the Clerk of this Court. State governments are not required to obtain consent to file as *amicus curiae.*

INTEREST OF THE AMICI

Americans for Effective Law Enforcement, Inc. (AELE), as a citizens group, is interested in establishing a body of law making the police and correctional effort more effective, in a constitutional manner.

AELE is a national, not-for-profit citizens organization incorporated under the laws of the State of Illinois. As stated in its by-laws, its purposes are:

> 1. To explore and consider the needs and requirements for the effective enforcement of the criminal law.
>
> 2. To inform the public of these needs and requirements, to the end that the courts will administer justice based upon a due concern for the general welfare and security of law-abiding citizens.
>
> 3. To assist the police, the prosecution, and the courts in promoting a more effective and fairer administration of the criminal laws.

In furtherance of these objectives, *AELE* seeks to represent, nationwide, the concern of the average citizen with the problems of crime, police effectiveness to deal with crime, and the effectiveness of correctional administrators in working with prisoners. It also provides legal research assistance in support of responsible law enforcement activities, principally through the *amicus curiae* process in the courts.

The Attorney General of the State of Indiana is an elected and constitutional official and is the chief legal officer of his State. He has specific responsibility for defending civil rights suits brought against State correctional officials.

Our specific interest in this case arises from the importance of effective correctional administration and the adverse impact that an unnecessarily broad interpretation of 42 U.S.C. § 1983 would have on the effectiveness of the states' prison systems. In addition, we are vitally concerned with the potential of abuse in

an increased access to the federal courts, when remedies for the redress of prisoners' grievances are readily available in the state courts. It is our belief that a failure of the Court to reverse the ruling of the Eighth Circuit Court of Appeals will burden prison administrators and other personnel in their vital encounters and relationships with prison inmates. Such a decision is likely to invite prisoners' suits in the federal district courts for the most frivolous and often unfounded grievances. This would cause enormous expenses to the states for legal defenses and put an additional strain on the relations between prisoners and prison employers, rendering the latter less effective in their key roles in the correctional system. Furthermore, it is our concern that the federal courts are ill-equipped to handle the anticipated influx of cases, resulting in the possibility of inattention given to meritorious claims for which these courts have been designed.

FACTUAL AND PROCEDURAL SETTING OF THIS CASE

The facts of this case were stipulated in the United States District Court for the District of Nebraska on January 18, 1978, and are as follows:

1. That Robert Rybolt was the Grievance Supervisor at the Reformatory at the time of the incident alleged herein.

2. That plaintiff ordered certain hobby materials from supply houses in California and that for purposes of payment thereof two drafts or checks were issued upon plaintiff's inmate account and accompanied order.

3. That the packages described herein arrived at the Nebraska Penal Complex on or about April 15, 1975, and that said package receipts were signed on or about April 21, 1975, by Mr. Paul Geros and Mr. Chuck Kostos who were assigned to the Prison Hobby Center. At the time the packages arrived at the Institution Mr. Taylor was in the Adjustment Center at the Nebraska Penal Complex.

4. That Mr. Taylor was in Deadlock in the Reformatory at the time he contacted Mr. Rybolt regarding said packages and that Mr. Taylor was not permitted "hobby" at that time and the packages had never been in Mr. Taylor's possession.

5. That Mr. Robert Rybolt was contacted by Mr. Taylor on numerous occasions and that Mr. Rybolt personally searched for said packages after contacting Mr. Francis Lugenbill regarding said packages and that subsequent searches did not turn up said packages.

6. That neither the packages nor the contents of same have ever been turned up.

7. Normal procedure when a package is received at the Institution addressed to an inmate at the Central Mail Room is either that the package is delivered to the inmate's

cell where he signs the package receipt or the inmate is noticed to pick up the package at the hobby center and to personally receipt therefor.

8. Deviations from this practice are made only in exceptional circumstances; and there is no evidence or record of there having been any exceptional circumstances with respect to the packages in question.

9. That it is not Institutional policy for one inmate to sign for another inmate's package because the package receipt is the record of the inmate's receiving the package.

10. There is no record of Mr. Taylor ever receiving said package.

11. Over a considerable period of time plaintiff made numerous inquiries and requested assistance in tracing his packages. None of the efforts of the persons so contacted were productive of any further information regarding the disposition of said packages.

12. Other than the receipts mentioned in paragraph 3 there is no record of the disposition of the packages or the whereabouts of same.

13. That there is no record indicating personal receipt of the packages by Mr. Taylor.

Upon consideration of these facts, the District Court entered summary judgment for plaintiff against the named defendants in the amount of $23.50.

On appeal the judgment of the District Court was summarily affirmed by the United States Court of Appeals for the Eighth Circuit. The defendants' motion for rehearing was denied. Petition for a writ of certiorari was filed by Petitioners to the United States Court of Appeals for the Eighth Circuit, which petition was granted.

ARGUMENT

I.

INTRODUCTION

The argument presented by *amici* focuses on three selected issues raised by this case, providing an analysis of relevant case law and a discussion of policy questions implicated by the issues. *Amici* wish to state that we are in complete accord with the arguments presented by the Petitioners in this case and wish to associate ourselves with and express our complete support for such arguments and points not discussed herein.

II.

SIMPLE NEGLIGENCE IS NOT A CLAIM OF CONSTITUTIONAL SIGNIFICANCE WORTHY OF FEDERAL INTERVENTION UNDER 42 U.S.C. § 1983, CIVIL RIGHTS ACT

In *Procunier* v. *Navarette,* 434 U.S. 555, 98 S. Ct. 855, 55 L. Ed. 2d 24 (1978), this Court specifically left open the question of whether negligent conduct can ever constitute a cause of action under 42 U.S.C. § 1983. Shortly thereafter in *Baker* v. *McCollan,* 443 U.S. 137 at 139, 99 S. Ct. 2689 at 2692, 61 L. Ed. 2d 433, at 439 (1978), this Court stated that the question of whether negligence could be a basis for a § 1983 claim, "may well not be susceptible of a uniform answer across the entire spectrum of conceivable constitutional violations which might be the subject of a § 1983 action." The circumstances of the instant case, however, clearly illustrate the need for a determination of whether a § 1983 claim may be based on simple negligence. The facts of the instant case serve to give clear notice of the types of suits that will be continually brought to the federal courts if this Court rules that simple negligence is an appropriate basis for § 1983 relief.

The lower federal courts have not been consistent in addressing this issue. While they have not defined a standard of negligence which would give § 1983 jurisdiction, the great

majority of cases that have addressed this issue on facts similar to the instant case have rejected claims based on simple or mere negligence. The court in *Leite* v. *City of Providence,* 463 F. Supp. 585 at 589 (D.R.I. 1978), stated: "Despite the statute's potential sweep, numerous courts have limited section 1983 so as not to reach instances of isolated negligent misconduct." *See, e.g., Bonner* v. *Coughlin,* 545 F. 2d 565 (7th Cir. 1976) (*en banc*) (simple negligence not actionable); *Beard* v. *Mitchell,* 604 F. 2d 485 (7th Cir. 1979) (same); *Parker* v. *McKeithen,* 488 F. 2d 553 (5th Cir.) *cert. den.,* 419 U.S. 838, 95 S. Ct. 67, 42 L. Ed 2d 65 (1974) (isolated incident of negligence not sufficient but gross negligence is actionable); *Williams* v. *Vincent,* 508 F. 2d 541 (2nd Cir. 1974) (negligence not actionable); *Howell* v. *Cataldi,* 464 F. 2d 272 (3rd Cir. 1972) (same); *Naughton* v. *Bevilacqua,* 458 F. Supp. 610 (D.R.I. 1978); *Page* v. *Sharpe,* 487 F. 2d 567 (1st Cir. 1973) (mere negligence, in absence of conduct which shocks the conscience, will not suffice); *Ronnei* v. *Butler,* 597 F. 2d 564 (8th Cir. 1979) (negligence or inadvertent conduct not sufficient); *Jones* v. *McElroy,* 429 F. Supp. 848 (E.D. Pa. 1977) (negligence not actionable); *Bogard* v. *Cook,* 586 F. 2d 399 (5th Cir. 1978) (simple negligence not enough to pierce official immunity); *Jones* v. *Diamond,* 594 F. 2d 997 (5th Cir. 1979) (same); and *Schweiker* v. *Gordon,* 442 F. Supp. 1134 (E.D. Pa. 1977) (same).

There can be no question that § 1983 serves a valuable purpose in providing a remedy to those who have been deprived of constitutional rights, privileges, and immunities by abuses of officials acting in their official capacities. But at the same time, the Civil Rights Act is not an appropriate vehicle for the solution of every grievance suffered by prison inmates. In the instant case, the alleged negligence can be no more than an isolated instance of a breach of an established procedure for the receipt of mail. The proper procedure appears to have been

breached, in part at least, because the plaintiff was in disciplinary segregation, and thus had placed himself in a position where he could not personally take possession of the hobby materials. If the warden and hobby manager can be held liable in a § 1983 action under these circumstances, one can only assume that every prison official will be vicariously held to the highest standard of care, even though they had no personal involvement in the facts, and the specific circumstances of the misconduct were beyond their control. Such a rule would subject prison officials to a virtual floodtide of unfounded suits.

In addition, if the Respondent were to prevail in this case, there would be two standards upon which a prisoner could bring a § 1983 suit; one standard for property, that being mere negligence, and another for a prisoner's medical care, that being the standard of deliberate indifference set forth by this Court in *Estelle* v. *Gamble*, 429 U.S. 97, 97 S. Ct. 285, 50 L. Ed 2d 251 (1976). This dichotomous result would require prison officials to exercise a higher standard of care in insuring the integrity of a prisoner's personal property than in the protection of a prisoner's health or life—a novel and totally unsatisfactory outcome.

Beyond the legal significance of these points, *amici* respectfully request that the Court consider the practical impact of holding mere negligence to be a basis for § 1983 suits in terms of the prospective volume of such cases likely to be brought by prisoners. Based on the burgeoning increase over the past decade of civil rights actions filed by state prisoners, a decision by this Court which gives license to prisoners to pursue their most insignificant grievances for the most remote and isolated instances of alleged negligent misconduct, will almost assuredly open the federal courts to a new generation of suffocating civil litigation. At a time when the federal courts are already hearing prisoners' civil rights actions involving seven packages of cigarettes (*Russell* v. *Bodner*, 489 F. 2d 280 (3rd Cir.

1973)); foreign objects in food (*Tuggle* v. *Evans*, 457 F. Supp. 1015 (D. Colo. 1978); and, in the instant case, a hobby set valued at $23.50, there is a compelling need for this Court to define the boundaries of questions of constitutional proportion with particularity and specificity. The setting of a standard higher than simple negligence will serve to allow the federal courts to direct their attention to meritorious claims rather than becoming mired in claims that can only be considered insignificant and frivolous. Surely it is not to be supposed that either the architects of the federal judiciary or the framers of the Civil Rights Act had in mind that the federal district courts were to sit as a small claims court for prison inmates bearing *de minimis* personal property complaints.

III.

REMEDIES FOR VIOLATION OF DUTIES OF CARE ARISING OUT OF TORT LAW SHOULD BE BROUGHT IN STATE COURTS, RATHER THAN IN THE FEDERAL COURTS THROUGH 42 U.S.C. § 1983

An examination of the purposes of § 1983 illustrate again that it should not be applied as a substitute for tort law remedies available in the state courts. In *Stefanelli* v. *Minard*, 342 U.S. 117, 72 S. Ct. 118, 96 L. Ed 138 (1951), this Court held that § 1983 actions were to respect the proper balance between the states and the federal government and that the statute was not to be used in a manner disruptive of proper federal-state comity. Three purposes of § 1983 were set forth in *McNeese* v. *Board of Education*, 373 U.S. 668, 83 S. Ct. 1433, 10 L. Ed 2d 622 (1963): (1) it overrides certain kinds of state laws; (2) it provides a remedy where state law is inadequate; and (3) it provides a federal remedy where the state remedy, though adequate in theory, is not available in practice.

The Respondent has made no showing of the need to invoke § 1983 relief on the basis of any of these purposes. On the contrary, adequate relief is provided for in the state courts.

Such relief is available in both theory and practice. The Respondent seeks to use the federal courts to provide a federal forum for nothing more than his common law tort claim. In *Baker* v. *McCollan, supra,* this Court addressed this concern without equivocation when it stated: "Section 1983 imposes liability for violation of rights protected by the Constitution, not for violations of duties of care arising out of tort law. Remedy for the latter type of injury must be sought in state court under traditional tort law principles." Indeed, a contrary holding would open the federal courts to every manner of tort claim presently cognizable in state courts, including simple negligence involved in the operation of motor vehicles owned by state governmental agencies. These, too, would be brought under 42 U.S.C. § 1983, if the Respondent's position were sustained in the instant case.

This is not to say that an aggrieved prisoner must exhaust his state remedies before seeking recourse in the federal courts. It is, rather, that where there is an adequate state remedy in theory and in fact available to one seeking to redress damage to his or her property because of the alleged simple negligence of state officials, there is no constitutional violation nor deprivation of property without due process requiring the invocation of federal jurisdiction. The availability of the state court forum provides the complete process that is due the prisoner in such negligence claims. In the instant case there, of course, could be no notice and hearing prior to the taking of the hobby materials because there was no intentional taking by the parties. Thus, due process could only be accorded after the loss occurred and that was done in this case by way of the availability of the state forum.

The Respondent may indeed have a valid and proper tort claim in the state court, but has failed to make out a claim of constitutional magnitude. Furthermore, the state courts not only have a more direct interest in this type of claim, but are better able to respond to the volume of such cases.

In a related case involving due process, this Court has stated, "The federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the States." *Meachum* v. *Fano,* 427 U.S. 215 at 229, 96 S. Ct. 2532, at 2540, 49 L. Ed 2d 451, at 461 (1976).

IV.

WHERE THERE IS NO SHOWING THAT THE NAMED DEFENDANTS WERE DIRECTLY INVOLVED IN THE ALLEGED NEGLIGENT ACTIVITIES, AND THE PROCEDURES ESTABLISHED BY THE PRISON FOR THE RECEIPT OF MAILED MATERIALS WERE NOT FOLLOWED, THE PLAINTIFF HAS FAILED TO ESTABLISH CAUSATION

Respondent seeks to apply a *respondeat superior* theory to the warden and hobby manager to hold them liable in their official capacities. There has been neither an allegation nor a showing that either party had a direct involvement in any misappropriation of the Respondent's hobby materials.

The United States Supreme Court and the lower courts have been consistent in holding that public officials cannot be held liable under § 1983 solely for their failure to exercise proper supervision over subordinates. *See, e.g., Rizzo* v. *Goode,* 423 U.S. 362, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976); *Leite* v. *City of Providence, supra; Owens* v. *Haas,* 456 F. Supp. 1009 (E.D.N.Y. 1978); *Butler* v. *Jenkins,* 450 F. Supp. 574 (E.D. Tenn., N.D. 1978); *Parrilla* v. *Cuyler,* 447 F. Supp. 363 (E.D.Pa. 1978); and *Thornton* v. *Redman,* 435 F. Supp. 876 (D.Del. 1977). Even the Eighth Circuit has ruled in *Cotton* v. *Hutto,* 577 F. 2d 453, 455 (8th Cir. 1978) that the doctrine of *respondeat superior* is not applicable in § 1983 actions.

The absence of direct involvement by the named parties is coupled with the fact that a prison procedure had been adopted for the receipt of mailed materials, but had not been followed in this particular case, through no fault of these named parties. To hold these individuals personally liable would be a radical

departure from the prevailing case law and would impose the strictest possible standard on prison supervisory personnel. The result of such a decision would have the greatest negative impact on the prisoners themselves. Prison administrators would be forced to drastically reduce all privileges which prisoners may now enjoy, because of any potential liability that may be created by a breach in an otherwise well-conceived policy or procedure. Such a rule would adversely impact upon the common interests of prisoners and prison administrators alike.

CONCLUSION

Amici respectfully submit that the decision of the United States Court of Appeals for the Eighth Circuit should be reversed on the law and on the basis of sound judicial policy.

Respectfully submitted,

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